

20 MAR 2008



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In re Application of:
YOUNGS et al.
U.S. Application No.: 10/569,563
PCT No.: PCT/US04/29285
Int'l Filing Date: 07 September 2004
Priority Date: 05 September 2003
Atty Docket No.: 089498.0463.PCT.US
For: METAL COMPLEXES OF N-
HETEROCYCLIC CARBENES AS
RADIOPHARMACEUTICALS AND
ANTIBIOTICS

DECISION ON PETITION

This decision is issued in response to the "Petition to Revive and to Establish Prior Receipt in the P.T.O. of Items Considered as Omitted by the Notification of Abandonment" filed on 23 January 2008 in the United States Patent and Trademark Office. In effect, applicant requests that the USPTO withdraw the holding of abandonment pursuant to 37 CFR 1.182 and to correct the serial number on a 13 November 2006 submission.

BACKGROUND

On 27 February 2006, applicant filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission under 35 U.S.C. 371 accompanied by, among other materials, payment of the basic filing fee.

On 11 September 2006, a Notification of Missing Requirements was mailed to applicant indicating, *inter alia*, that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b) was required. On 13 November 2006, applicant allegedly filed a response.

On 11 January 2008, a Notification of Abandonment was mailed to applicant indicating that a response to the Notification of Missing Requirements was not received.

On 23 January 2008, the instant petition considered herein was filed. The petition asserts that, on 13 November 2006, applicant filed a timely response to the 11 September 2006 Office action. A copy of the previously filed response and a copy of a return postcard that itemizes the 13 November 2006 submission and bears a USPTO receipt stamp dated 13 November 2006 accompany the petition.

DISCUSSION

Based on the statements in the present petition and the itemized return postcard bearing the USPTO receipt stamp, it is concluded that materials accompanying the present petition (including the Response to the Notification of Missing Requirements) were originally filed herein on 13 November 2006 as a timely response to the Office action mailed 11 September

2006. However, this submission bore incorrect application number on the transmittal letter (11/569,563).

The 23 January 2008 petition will be treated as a petition under 37 CFR 1.182 in order to correct the U.S. national stage application number to 10/569,563 on papers originally on 13 November 2006 and 23 January 2008, which also incorrectly referenced 11/569,563 on the transmittal letter as filed.

Applicant's petition under 37 CFR 1.182 to correct the national stage application number to 10/569,563 on papers filed on 13 November 2006 and 23 January 2008 is **GRANTED**. The papers filed on 13 November 2006 and 23 January 2008 in 11/569,563 will be moved to 10/569,563.

It is noted that the declaration submitted on 13 November 2006 is a four page declaration. The submitted declaration is comprised of seven pages: two pages marked "5/6" and four pages marked "6/6", which are executed by different inventors. The submitted declaration appears to be a composite declaration created from the combination of separately executed declarations. The declaration is not properly executed. It appears that either the attorney pieced together separate complete declarations into one composite declaration or that the inventors were presented with an incomplete declaration. While it is acceptable for applicants to execute separate copies of the declaration, the entire declaration, as executed by the inventor, must be submitted. "Where individual declarations are executed, they must be submitted as individual declaration rather than combined into one declaration." See MPEP 201.03. The declaration is unacceptable as filed and thus, the requirements of 37 CFR 1.497 (a) and (b) have not been met.

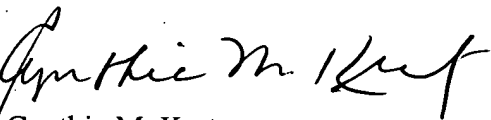
CONCLUSION

The petition under 37 CFR 1.182 to accept a copy of the response filed on 13 November 2006 in application 11/569,563 with a filing date of 13 November 2006 is **GRANTED**.

The papers filed on 13 November 2006 and 23 January 2008 in 11/569,563 will be moved to 10/569,563. As explained above, a new declaration in compliance with 37 CFR 1.497(a) and (b) is required.

This application is being returned to the National Stage Processing Branch of the Office of PCT Operations for processing in accord with this decision, including correcting USPTO records so as to correct the application number on papers filed on 13 November 2006 and 23 January 2008 in 11/569,563 to 10/569,563.

The Notification of Abandonment issued on 11 January 2008 is hereby **VACATED**.



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